



IN THE U.S. PATENT AND TRADEMARK OFFICE

In re of Applicant

Tadahiro OHMI et al.

Serial No.: 10/706,423

Filing Date: November 10, 2003

Title: PLASMA DEVICE

Art Group Unit: 3742

Examiner: N/A

Attorney Docket No.: FUK-140

Confirmation No.: 6798

PETITION UNDER 37 C.F.R §1.53(e) IN REPLY TO  
NOTICE TO FILE CORRECTED APPLICATION PAPERS: FILING DATE GRANTED

MS: Missing Parts  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Responsive to the "NOTICE TO FILE CORRECTED APPLICATION PAPERS: Filing Date Granted" dated September 14, 2004, in the above-captioned matter, having a due date of November 14, 2004, Applicant hereby petitions, pursuant to 37 C.F.R §1.53(e), for a determination that the nonprovisional application papers filed on November 10, 2003 were complete and without any omitted items. Specifically, Applicant hereby petitions for a determination that Figure 89 - identified by the Notice as being omitted from the application papers - was in fact deposited in the U.S. Patent and Trademark Office with the nonprovisional application papers filed in the above-identified matter. This deposit occurred by operation of an incorporation by reference statement filed concurrently with the application papers which acted to bodily incorporate Figure 89 from the co-pending parent application identified in the statement into the instant application (which claims divisional benefit from such parent case). Accordingly, Applicant hereby petitions that the complete application papers in the above-identified matter, accorded the filing date of November 10, 2003, include such Figure 89.

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Application No.: 10/706,423

Attorney Docket No.: FUK-140

Reply (in part) for Notice to File Corrected Application Papers Dated: September 14, 2004

### STATEMENT OF FACTS

The filing for the nonprovisional application included, inter alia, a preliminary amendment that was filed concurrently with the other nonprovisional application papers and was transmitted under the same express mail communication that was accorded a filing date of November 10, 2003. The preliminary amendment amended the specification, inter alia, to recite continuation data on Page 1 thereof that states that the application is “a divisional of U.S. Patent Application No. 10/100,533, filed on March 18, 2002, which is a divisional of Patent Application No. 09/355,229 filed on July 26, 1999, the disclosure of each of which is herein explicitly incorporated by reference.” At all relevant times for purposes of this petition, co-pending parent application no. 10/100,533 includes, inter alia, the same Figure 89 drawing sheet that is indicated by the Notice as having been omitted from the original application papers of the above-identified matter.

MPEP §2163.07(b) (“Incorporation by Reference”) states in relevant part:

The information incorporated is as much a part of the application as filed as if the text was repeated in the application, and should be treated as part of the text of the application as filed.

Accordingly, by operation of the preliminary amendment, the allegedly omitted Figure 89 drawing sheet was in fact on deposit with the Patent Office on November 10, 2003 (as part of the record of co-pending parent application no. 10/100,533) and was constructively deposited into the nonprovisional application papers of the above-identified application on November 10, 2003 by operative effect of the incorporation by reference statement contained in the preliminary amendment.

Application No.: 10/706,423

Attorney Docket No.: FUK-140

Reply (in part) for Notice to File Corrected Application Papers Dated: September 14, 2004

#### RELIEF REQUESTED

Applicant respectfully requests that the allegedly omitted Figure 89 drawing sheet be considered as having been deposited in the Patent Office with the original filing of the nonprovisional application papers to form a part thereof and thereby be accorded the same filing date of November 10, 2003. Applicant further respectfully requests that the requirements of the Notice as applied to the alleged omission of Figure 89 be withdrawn and that the accompanying petition fee be refunded.

#### PETITION FEE

Enclosed please find a check in the amount of \$130.00 in payment of the petition fee for submitting the instant petition, pursuant to 37 C.F.R. §1.17(h).

#### SUBMISSION ACCOMPANYING PETITION

Applicant has filed concurrently herewith a first supplemental preliminary amendment in the above-identified application that replaces (in part) the identified material incorporated by reference with the actual material (namely, the Figure 89 drawing sheet), by operation of the incorporation by reference statement as permitted by MPEP §2163.07(b).

In addition to the correction pertaining to the alleged omission of Fig. 89, the Notice also requires a correction pertaining to the submission of a substitute specification and replacement drawings. However, a response to such portion of the Notice does not accompany this petition and will be sent as a separate submission under different cover at a later time.

Application No.: 10/706,423

Attorney Docket No.: FUK-140

Reply (in part) for Notice to File Corrected Application Papers Dated: September 14, 2004

If the Patent Office has any questions or comments that would advance prosecution of this case, the Patent Office is invited to call the undersigned at 260/484-4526.

Respectfully Submitted,



Randall J. Knuth

Registration No. 34,644

RJK/jrw2

Enclosures: Copy of Notice to File  
Corrected Application Papers  
Check No. 823 (\$130.00)  
First Supplemental Preliminary  
Amendment  
Return Postcard

Customer No.: 022855  
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on: November 15, 2004.



Randall J. Knuth, Registration No. 34,644

November 15, 2004

Date